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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Ann M. Nichols, et al. Art Unit 3728
Serial No. 10/010,934
Filed November 13, 2001
Confirmation No. 8461
For PACKAGE
Examiner Jerrold D. Johnson

APPEAL BRIEF

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July 20, 2006

APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-referenced application made in the final Office action dated April 4, 2006. A Notice of Appeal was filed on June 1, 2006.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also authorized to charge any fee deficiency or credit any overpayment to Deposit Account No. 19-1345 in the name of Senniger, Powers.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appeals have been filed in U.S. Patent Application Serial No. 10/760,877 entitled INTERLABIAL PAD PACKAGING and U.S. Patent Application Serial No. 10/761,042 entitled INTERLABIAL PAD PACKAGING. These applications have common subject matter

with the case at hand and Kimberly-Clark Worldwide, Inc. is owner of a 100 percent interest.

III. STATUS OF CLAIMS

Claims 2-13, 15, 17-19, 21, 23, and 25 are currently pending for consideration in this application. Claims 1, 14, 16, 20, 22, and 24 have been cancelled. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 2-13, 15, 17-19, 21, 23, and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,557,853 (Jones) in view of U.S. Patent Nos. 5,844,771 (McCormick) and 4,502,599 (Perecman).

Claims 2-13, 15, 17-19, 21, 23, and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over McCormick in view of Jones and Perecman.

The rejections of claims 2-13, 15, 17-19, 21, 23, and 25 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the mailing of the final Office action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 19 is directed to a package 60 comprising a plural number of individually wrapped absorbent feminine care articles 20, and reclosable packaging 62. See page 6, lines 28-32 and Figs. 2-4.

The reclosable packaging 62 comprises a middle portion 104 and a back portion 106 together at least in part forming a flexible pocket 64 having a hollow interior 66 receiving said plural number of absorbent feminine care articles 20. See page 7, lines 10-13, page 9, lines 11-14 and Figs. 4 and 5. The hollow interior 66 of the pocket 64 has a volume which is substantially filled by the plural number of individually wrapped feminine care articles 20 so that the pocket conforms to the articles. See page 8, lines 1-5 and Fig. 4. The pocket 64 is of single-piece construction. See page 9, lines 3-7 and Fig. 5. An opening 68 extends into the hollow interior 66 of the pocket 64. See page 7, lines 13-15. The opening 68 is sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles 20 to be withdrawn from said hollow interior 66 of the pocket 64. See page 7, lines 14-17 and Fig. 4. A flap 70 is attached to the pocket 64 and adapted for covering the opening 68 to retain said plural number of individually wrapped feminine care articles 20 in the hollow interior 66 of the pocket 64. See page 7, lines 17-20 and Figs. 3 and 4. The flap 70 is selectively moveable between an open position in which the opening 68 is generally unobstructed by said flap to permit said article 20 to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area 72 of the middle portion 104 of the pocket 64 to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening. See page 7, lines 20-27 and Figs. 2 and 3. A reclosable adhesive closure 76 comprises an adhesive material positioned on said flap 70 for releasably securing the flap in its closed position on said exterior area 72 of the middle portion 104 of the pocket 64. See page 7, lines 33-35 and Fig. 3. The adhesive closure 76 is

spaced from a distal edge 74 of the flap 70 to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure. See page 8, lines 13-16 and Fig. 3. The flap 70 is releasably securable by said adhesive closure 76 substantially anywhere on said exterior area 72 of said middle portion 104 of the pocket 64. See page 8, lines 1-5 and Figs. 2 and 3.

Claim 21 is directed to a package 60 comprising a plural number of individually wrapped absorbent feminine care articles 20, and reclosable packaging 62. See page 6, lines 28-32 and Figs. 2-4. The reclosable packaging 62 comprises a middle portion 104 and a back portion 106 together forming a flexible pocket 64 having a hollow interior 66 receiving said plural number of absorbent feminine care articles 20. See page 7, lines 10-13, page 9, lines 11-14 and Figs. 4 and 5. The hollow interior 66 of the pocket 64 has a volume which is substantially filled by the plural number of individually wrapped feminine care articles 20 so that the pocket conforms to the articles. See page 8, lines 1-5 and Fig. 4. An opening 68 extends into the hollow interior 66 of the pocket 64. See page 7, lines 13-15. The opening 68 is sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles 20 to be withdrawn from said hollow interior 66 of the pocket 64. See page 7, lines 14-17 and Fig. 4. A flap 70 is attached to the pocket 64 and adapted for covering the opening 68 to retain said plural number of individually wrapped feminine care articles 20 in the hollow interior 66 of the pocket 64. See page 7, lines 17-20 and Figs. 3 and 4. The flap 70 is selectively moveable between an open position in which the opening 68 is generally unobstructed by said flap to permit said article 20 to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a

portion of an exterior area 72 of the middle portion 104 of the pocket 64 to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening. See page 7, lines 20-27 and Figs. 2 and 3. The flap 70 is everywhere free from flush alignment with the pocket 64 in the closed position of said flap. See page 8, lines 1-5 and Fig. 2. A reclosable adhesive closure 76 comprises an adhesive material positioned on said flap 70 for releasably securing the flap in its closed position on said exterior area 72 of the middle portion 104 of the pocket 64. See page 7, lines 33-35 and Fig. 3. The adhesive closure 76 is spaced from a distal edge 74 of the flap 70 to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure. See page 8, lines 13-16 and Fig. 3. The flap 70 is releasably securable by said adhesive closure 76 substantially anywhere on said exterior area 72 of said middle portion 104 of the pocket 64. See page 8, lines 1-5 and Figs. 2 and 3.

Claim 23 is directed to a package 60 comprising a plural number of individually wrapped absorbent feminine care articles 20, and a reclosable packaging 62. See page 6, lines 28-32 and Figs. 2-4. The reclosable packaging 62 comprises a flexible pocket 64 comprising at least in part a first wall 104 and having a hollow interior 66 receiving said plural number of absorbent feminine care articles 20. See page 7, lines 10-13, page 9, lines 11-14 and Figs. 4 and 5. The hollow interior 66 of the pocket 64 has a volume which is substantially filled by the plural number of individually wrapped feminine care articles 20 so that the pocket conforms to the articles. See page 8, lines 1-5 and Fig. 4. An opening 68 extends into the hollow interior 66 of the pocket 64. See page 7, lines 13-15. The opening 68 is sized and shaped for permitting at least one of

said plural number of individually wrapped feminine care articles 20 to be withdrawn from said hollow interior 66 of the pocket 64. See page 7, lines 14-17 and Fig. 4. A flap 70 is attached to the pocket 64 and adapted for covering the opening 68 to retain said plural number of individually wrapped feminine care articles 20 in the hollow interior 66 of the pocket 64. See page 7, lines 17-20 and Figs. 3 and 4. The flap 70 is selectively moveable between an open position in which the opening 68 is generally unobstructed by said flap to permit said article 20 to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall 104 of the pocket 64 to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening. See page 7, lines 20-27 and Figs. 2 and 3. A second portion of the first wall 104 is uncovered by the flap 70 in the closed position of the flap. See page 8, lines 1-5 and Fig. 2. The flap 70 is free from flush alignment with said uncovered second portion of the first wall 104 in the closed position of said flap. See page 8, lines 1-5 and Fig. 2. A reclosable adhesive closure 76 comprises an adhesive material positioned on said flap 70 for releasably securing the flap in its closed position anywhere on said first portion of the first wall 104 of the pocket 64. See page 7, lines 33-35 and Fig. 3. The adhesive closure 76 is spaced from a distal edge 74 of the flap 70 to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure. See page 8, lines 13-16 and Fig. 3.

Claim 25 is directed to a package 60 comprising a plural number of individually wrapped absorbent feminine care articles 20, and reclosable packaging 62. See page 6, lines 28-32 and Figs. 2-4. The reclosable packaging 62 comprises a rectangular

sheet 90 having opposing side edges 92, 94 and opposite end edges 96, 98. See page 9, lines 5-7 and Fig. 5. A first fold 100 extends between the side edges 92, 94 of the sheet 90 to define a bottom of the packaging 62. See page 9, lines 7-8, and Fig. 5. The first fold 100 separates a middle portion 104 of the packaging 62 from a back portion 106 of the packaging. See page 9, lines 11-12 and Fig. 5. The middle and back portions 104, 106 of the packaging 62 are sealingly joined along overlapping side edges 92, 94 to define a flexible pocket 64. See page 9, lines 12-14 and 22-28 and Fig. 5. The pocket 64 has a hollow interior 66 for receiving said plural number of absorbent feminine care articles 20. See page 7, lines 10-13 and Fig. 4. The hollow interior 66 of the pocket 64 has a volume which is substantially filled by the plural number of individually wrapped feminine care articles 20 so that the pocket conforms to the articles. See page 8, lines 1-5 and Fig. 4. An opening 68 extends into the hollow interior 66 of the pocket 64. See page 7, lines 13-15. The opening 68 is sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles 20 to be withdrawn from said hollow interior 66 of the pocket 64. See page 7, lines 14-17 and Fig. 4. A second fold 102 extends between the side edges 92, 94 of the sheet 90 generally parallel to and above the first fold 100 to define a top of the packaging 62. See page 9, lines 9-11 and Figs. 2 and 5. The second fold 102 separates the back portion 106 of the packaging 62 from a front portion 108 of the packaging 63. See page 9, lines 14-15 and Figs. 2 and 5. The front portion 108 of the packaging 63 defines a flap 70. See page 9, lines 15-16 and Figs. 2 and 5. The flap 70 is adapted for covering the opening 68 to retain said plural number of individually wrapped feminine care articles 20 in the hollow interior 66 of the pocket 64. See

page 7, lines 17-20 and Figs. 3 and 4. The flap 70 is selectively moveable between an open position in which the opening 68 is generally unobstructed by said flap to permit said article 20 to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the middle portion 104 of the pocket 64 to retain said plural number of articles in the pocket 64 and to prevent said plural number of articles from passing through the opening. See page 7, lines 20-27 and Figs. 2 and 3. A second portion of the middle portion 104 is uncovered by the flap 70 in the closed position of the flap. See page 8, lines 1-5 and Fig. 2. The flap 70 is free from flush alignment with said uncovered second portion of the middle portion 104 in the closed position of said flap. See page 8, lines 1-5 and Fig. 2. A reclosable adhesive closure 76 comprises an adhesive material positioned on said flap 70 for releasably securing the flap in its closed position on the middle portion 104 of the pocket 64. See page 7, lines 33-35 and Fig. 3. The adhesive closure 76 is spaced from a distal edge 74 of the flap 70 to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure. See page 8, lines 13-16 and Fig. 3. The flap 70 is releasably securable by said adhesive closure 76 substantially anywhere on said first portion of said middle portion 104 of the pocket 64. See page 8, lines 1-5 and Figs. 2 and 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejections of claims 2-13, 15, 17-19, 21, 23, and 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,557,853 (Jones) in view of U.S. Patent Nos. 5,844,771 (McCormick) and 4,502,599 (Perecman).

B. Appellants appeal the rejections of claim 2-13, 15, 17-19, 21, 23, and 25 under 35 U.S.C. §103(a) as being unpatentable over McCormick in view of Jones and Perekman.

VII. ARGUMENT

A. **Claims 2-13, 15, 17-19, 21, 23, and 25 are nonobvious in view of and patentable over U.S. Patent No. 3,557,853 (Jones) in combination with U.S. Patent Nos. 5,844,771 (McCormick) and 4,502,599 (Perekman).**

Claims 2-13, 15, 17-19, 25, and 26

Claim 19 is directed generally to a recloseable package which contains individually wrapped feminine care articles that can be carried in the user's purse (or similar portable container) along with other items. The package is large enough to permit easy removal of the feminine care product, but no larger than absolutely necessary so that minimal room is occupied by the package in a purse and the feminine care articles are maintained in an orderly fashion within the package. Moreover, the package is configured so that remaining feminine care articles do not easily fall out or become disorganized after some of the feminine care articles have been removed from the package. In other words, the package is constructed so that it can be substantially conformed to its contents as the volume occupied by the contents is reduced. Thus, the claimed invention provides a substantial benefit for women (e.g., working women) who are away from home for extending periods during the day. The prior art, as explained in detail below, has not contemplated the provision of such a convenient and functional package of feminine care articles.

Specifically, claim 19 is directed to a package comprising:
a plural number of individually wrapped absorbent feminine
care articles; and

reclosable packaging comprising:

a middle portion and a back portion together at least in part forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles, said pocket being of single-piece construction;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a

distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

Claim 19 is submitted to be nonobvious in view of and patentable over U.S. Patent No. 3,557,853 (Jones) in combination with U.S. Patent Nos. 5,884,771 (McCormick) and 4,502,599 (Perecman), in that whether considered alone or in any combination, the references fail to disclose or suggest a package having a pocket and a reclosable adhesive closure positioned on a flap so that the flap is releasably securable by the adhesive closure substantially anywhere on an exterior area of a middle portion of the pocket.

Jones discloses a cloth container (10), such as constructed of cloth or silt (see column 2, lines 60-61), for holding sanitary napkins (21) and having a closure flap (22) to permit access to the interior of the container. Hook and loop type fastener strips (24, 25) are secured to the closure flap (22) and the front panel (12) of the container (10), respectively. The hook and loop type fasteners are used to hold the flap in the closed position by substantially aligning and mating the hook strip (24) with the loop strip (25).

As recognized by the Examiner, Jones fails to disclose or otherwise teach a package in which an adhesive closure is used to releasably secure the flap to the front panel. More particularly, with respect to claim 19, Jones fails to show or suggest an adhesive closure on the flap or that the flap be releasably securable anywhere on the exterior area of the middle portion of the package as recited in claim 19. Rather, with the hook and loop fasteners disclosed by Jones the flap must be secured to the front panel in the same location (e.g., where the

hook fastener engages the loop fastener) each and every time the flap is closed. Otherwise, the hook fastener would not engage the loop fastener. Thus, Jones clearly fail to show or even suggest a package having a pocket and a reclosable adhesive closure positioned on a flap so that the flap is releasably securable by the adhesive closure substantially anywhere on an exterior area of a middle portion of the pocket as recited in claim 19.

Obviousness can only be established by modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references or in the knowledge generally available to one of ordinary skill in the art. MPEP § 2143.01 citing *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). The mere fact that a prior art reference may be modified to obtain the claimed invention does not make the claimed invention obvious if there is no suggestion or motivation in the reference to make the modification. *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990).

The Office previously cited art (U.S. Patent No. 6,015,045 (Joseph et al.)) in this case that disclosed the use of adhesive on a flap but failed to provide any teachings by such art that would motivate one skilled in the art to replace the hook and loop fasteners of Jones with an adhesive strip on the flap. See the final Office action dated July 23, 2004 and applicants Amendment C After Final dated September 22, 2004 which overcame such a position.

In the present action, the Office now relies on Perecman as teaching a bag 5 having a flap 9 with a strip of pressure-sensitive adhesive 10. Perecman, however, is no more relevant than Joseph et al. cited previously. That Perecman disclose providing adhesive on the flap does not render it obvious to

replace the hook and loop fasteners of Jones with adhesive. There must be some motivation provided by the cited art for making the modification. The Office opines that the motivation for replacing the hook and loop fasteners of Jones with the adhesive disclosed in Perecman is to provide a package having "a low labor and materials cost to manufacture." Nowhere in Perecman or the other references of record is it indicated that hook and loop fasteners are more costly than adhesive closures, nor does the Office provide any evidence to support such a statement.

Jones indicates that the disclosed bag can be manufactured inexpensively. See column 2, lines 72-74. Even though Perecman teaches using adhesive for securing the flap in its closed position, Perecman provides no teaching that it would be cheaper to use adhesive than hook and loop fasteners. Both Perecman and Jones therefore lack any teaching that would motivate one skilled in the art to replace the hook and loop fasteners on the package of Jones with an adhesive closure on the flap thereof to save money as suggested by the Office.

Furthermore, Jones discloses that the cloth container (10) is constructed from cloth or silk (see column 2, lines 60-61), neither of which provides a good surface for using adhesive material to adhere the flap in its closed position. Rather, cloth materials result in cloth fibers or lint adhering to the adhesive material and reducing its effectiveness. For these additional reasons, one skilled in the art would not be motivated to replace the hook and loop fasteners of Jones with adhesive.

McCormick also fails to provide the required motivation to replace the hook and loop fasteners of Jones with adhesive on the flap. McCormick discloses a kit including an outer pouch 10, a plurality of inner bags 20, cleaning wipes 30, and a

storage and disposal pouch 40. The outer pouch 10 is designed to contain the remaining components of the kit along with the supplies used with the kit. The outer pouch 10 includes a pocket 12, an opening 13, and a sealing flap 14. The outer pouch 10 could also include a closure 16 on the pocket 12 and closure 18 on the flap 14. McCormick sets forth a list of suitable closures 16 and 18 including a hook and loop type closure, a snap type closure, a clasp type closure or adhesive. McCormick thus appears to suggest that hook and loop type closures and adhesive are at best interchangeable, i.e., there is no advantage disclosed by McCormick for using adhesive instead of a hook and loop fastener. In this respect, McCormick is also no more relevant than Joseph et al., which was cited by the Office in combination with Jones in the final Office action dated July 23, 2004 and overcome by applicants.

Moreover, McCormick discloses that the pouch is inexpensive to make without distinguishing between the various types of closures. Thus, one of ordinary skill in the art would assume from McCormick that using hook and loop fasteners is no more expensive (or no less expensive) than using adhesive closures since regardless of which closure is used, the bag is inexpensive and disposable. Thus, McCormick does not provide any motivation to one of ordinary skill in the art to replace the hook and loop fastener on Jones with an adhesive closure to make a cheaper bag as suggested by the Office. In fact, McCormick teaches away from such a position.

Since there is no teaching in Perecman or McCormick that would motivate one skilled in the art to modify Jones in the manner asserted by the Office, claim 19 is submitted to be nonobvious in view of and patentable over Jones, Perecman, McCormick, and the other references of record.

Claims 2-13, 15, 17-18, and 25-26, depend directly or indirectly from claim 19 and are submitted to be patentable over the references of record for the same reasons as claim 19.

Claim 21

Claim 21 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, the flap being everywhere free from flush

alignment with the pocket in the closed position of said flap;
and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

Claim 21 is submitted to be nonobvious in view of and patentable over Jones in combination with McCormick and Perekman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

Claim 23

Claim 23 is directed to a package comprising:
a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:
a flexible pocket comprising at least in part a first wall and having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the first wall being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the first wall in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position anywhere on said first portion of the first wall of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure.

Claim 23 is submitted to be nonobvious in view of and patentable over Jones in combination with McCormick and Perekman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and

configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

Claim 25

Claim 25 is directed to a package comprising:

A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a rectangular sheet having opposing side edges and opposite end edges;

a first fold extending between the side edges of the sheet to define a bottom of the packaging, the first fold separating a middle portion of the packaging from a back portion of the packaging, the middle and back portions of the packaging being sealingly joined along overlapping side edges to define a flexible pocket;

the pocket having a hollow interior for receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a second fold extending between the side edges of the sheet generally parallel to and above the first fold to define a top of the packaging, the second fold separating the back portion of

the packaging from a front portion of the packaging, the front portion of the packaging defining a flap;

the flap being adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the middle portion being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the middle portion in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said first portion of said middle portion of the pocket.

Claim 25 is submitted to be nonobvious in view of and patentable over Jones in combination with McCormick and Perecman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap

and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

B. Claims 2-13, 15, 17-19, 21, 23, and 25 are nonobvious in view of and patentable over McCormick in combination with Jones and Perecman.

Claims 2-13, 15, 17-19, 25, and 26

Claim 19 is also submitted to be nonobvious in view of and patentable over McCormick in combination with Jones and Perecman, in that whether considered alone or in any combination, the references fail to disclose or suggest a package having a pocket with a hollow interior having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles.

McCormick discloses a disposable hygiene carrier. The kit includes an outer pouch 10 (Fig. 1), a plurality of inner bags 20 (Fig. 2), cleaning wipes 30 (Fig. 3), and a storage and disposal pouch 40 (Fig. 4). The outer pouch 10 is designed to contain the remaining components of the kit (i.e., inner bags 20, cleaning wipes 30, and storage and disposal pouch 40) along with the personal care supplies.

As shown in Fig. 1 of McCormick, the outer pouch 10 is an envelope having a pocket 12, an opening (not identified), and a flap 14 for selectively closing the opening. The outer pouch 10 also includes a closure 16 on the pocket 12 and a closure 18 on the flap 14. The closures 16, 18 permit the flap 14 of the pocket 12 to be repeatedly opened and closed so that items can be removed from or added to the pocket. The closures 16, 18 can be hook and loop type closures, snaps, zippers, twist ties, interlocking mating strips, clasp type closures, or adhesive.

As disclosed at column 3, lines 6-10, McCormick discloses that the kit may be used with, among a number of items, feminine hygiene products. Accordingly, the outer pouch in such an embodiment would contain not only feminine hygiene products but also the inner bags, the cleaning wipes, and the storage and disposal pouch.

McCormick thus fails to disclose or suggest that the hollow interior of the pocket has a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles. Rather, the inner bags 20, cleaning wipes 30, and storage and disposal pouch 40 are also placed in the interior of the pocket along with the personal care supplies. Accordingly, the outer pouch cannot be "substantially filled" by a plural number of individually wrapped feminine care articles as recited in claim 19. In addition, the inner bags, cleaning wipes, and storage and disposal bags in the outer pouch would inhibit the pocket from conforming to the personal care supplies. Thus, the pocket of McCormick's outer pouch also does not conform to the feminine hygiene articles therein as recited in claim 19.

Moreover, McCormick is directed to the entire kit comprising personal care supplies, the outer pouch, the plurality of inner bags, the cleaning wipes, and the storage and disposal pouch. As such, one of ordinary skill in the art would not be motivated to fill the outer pouch entirely with feminine hygiene articles because doing so would go against the very teachings of McCormick. See, e.g., col. 1, lines 61-63.

The Examiner opines that Jones can be used to teach the storage of feminine care products in the package of McCormick. See page 5, first full paragraph of the final Office action. However, as already mentioned, removal of the kit items of McCormick from McCormick's package would do violence to the

teachings of McCormick. Thus, one of ordinary skill in the art would not be motivated to store feminine care products as shown by Jones in the package of McCormick.

Perecman also fails to teach or suggest a pocket having a hollow interior with a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles nor does the Examiner contend otherwise.

For the above reasons, claim 19 is submitted to be non-obvious in view of and patentable over McCormick in combination with Jones and Perecman.

Claims 2-13, 15, 17-18, and 25-26, depend directly or indirectly from claim 19 and are submitted to be patentable over the references of record for the same reasons as recited in claim 19.

Claim 21

Claim 21 is also submitted to be nonobvious in view of and patentable over McCormick in combination with Jones and Perecman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package including a pocket with a hollow interior having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles.

Claim 23

Claim 23 is submitted to be nonobvious in view of and patentable over McCormick in combination with Jones and Perecman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there

is no suggestion or motivation in any of these references for a package including a pocket with a hollow interior having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles.

Claim 25

Claim 25 is submitted to be nonobvious in view of and patentable McCormick in combination with Jones and Perekman for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package including a pocket with a hollow interior having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 2-13, 15, 17-19, 21, 23, and 25 be allowed.

Respectfully submitted,



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IX. CLAIMS APPENDIX

2. A package as set forth in claim 19 wherein the closure is positioned at least about 4 millimeters from the distal edge of the flap.

3. A package as set forth in claim 2 wherein the closure is positioned about 16 millimeters from the distal edge of the flap.

4. A package as set forth in claim 19 wherein said distal edge is substantially straight and said adhesive closure includes an elongate strip of adhesive material extending substantially parallel to the distal edge of the packaging flap.

5. A package as set forth in claim 4 wherein the elongate strip of adhesive material has a width of less than about 20 millimeters.

6. A package as set forth in claim 5 wherein the strip of adhesive material has a width of more than about 2 millimeters.

7. A package as set forth in claim 5 wherein the strip of adhesive material has a width of about 7 millimeters.

8. A package as set forth in claim 4 wherein the strip of adhesive material is substantially continuous and uninterrupted along its entire length.

9. A package as set forth in claim 4 wherein the flap is substantially rectangular.

10. A package as set forth in claim 19 wherein the adhesive closure extends substantially an entire width of the flap.

11. A package as set forth in claim 19 wherein the adhesive closure is a two sided tape.

12. A package as set forth in claim 19 wherein the adhesive closure is a hot melt adhesive.

13. A package as set forth in claim 19 wherein the flap has an inner face and an outer face, and the adhesive closure is positioned on said inner face of the flap for releasably holding said flap in the closed position.

15. A package as set forth in claim 19 wherein the plurality of absorbent articles are arranged in a stack.

17. A package as set forth in claim 19 wherein the feminine care product comprises a panty liner.

18. A package as set forth in claim 19 wherein the feminine care product comprises an interlabial pad.

19. A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together at least in part forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles;

the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually

wrapped feminine care articles so that the pocket conforms to the articles, said pocket being of single-piece construction;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the

closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

21. A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to

permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, the flap being everywhere free from flush alignment with the pocket in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

23. A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a flexible pocket comprising at least in part a first wall and having a hollow interior receiving said plural number of

absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the first wall being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the first wall in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position anywhere on said first portion of the first wall of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure.

25. A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a rectangular sheet having opposing side edges and opposite end edges;

a first fold extending between the side edges of the sheet to define a bottom of the packaging, the first fold separating a middle portion of the packaging from a back portion of the packaging, the middle and back portions of the packaging being sealingly joined along overlapping side edges to define a flexible pocket;

the pocket having a hollow interior for receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially

filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles; an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a second fold extending between the side edges of the sheet generally parallel to and above the first fold to define a top of the packaging, the second fold separating the back portion of the packaging from a front portion of the packaging, the front portion of the packaging defining a flap;

the flap being adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectively moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the middle portion being uncovered by the flap in the closed position of the flap, the flap being free from

flush alignment with said uncovered second portion of the middle portion in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said first portion of said middle portion of the pocket.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.